

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): February 27, 2023

Vaxcyte, Inc.

(Exact name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

01-39323
(Commission
File Number)

46-4233385
(IRS Employer
Identification No.)

**825 Industrial Road
Suite 300
San Carlos, California**
(Address of Principal Executive Offices)

94070
(Zip Code)

Registrant's Telephone Number, Including Area Code: 650 837-0111

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	PCVX	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§ 230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§ 240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01 Other Events.

As previously disclosed, Vaxcyte, Inc. (the “**Company**”) entered into an Open Market Sale AgreementSM (the “**Sales Agreement**”), dated July 1, 2021, with Jefferies LLC (“**Jefferies**”), pursuant to which the Company may offer and sell shares of its common stock, from time to time, up to an aggregate amount of gross sales proceeds of \$150.0 million through an “at the market offering” program (the “**2021 ATM Program**”), under a shelf registration statement on Form S-3ASR (File No. 333-257622), filed with the SEC on July 2, 2021 (the “**Registration Statement**”). As of February 27, 2023, the Company had offered and sold shares of its common stock with an aggregate offering price of approximately \$137.8 million pursuant to the 2021 ATM Program.

On February 27, 2023, the Company and Jefferies entered into an amendment to the Sales Agreement (the “**Amendment No. 1**” and together with the Sales Agreement, the “**Amended Sales Agreement**”) to provide for an increase in the aggregate offering amount under the Sales Agreement, such that as of February 27, 2023, the Company may offer and sell shares of its common stock having an aggregate offering price of up to \$400.0 million pursuant to the prospectus supplement filed on February 27, 2023, exclusive of shares previously sold under the 2021 ATM Program. The material terms and conditions of the Sales Agreement otherwise remain unchanged.

Sales, if any, of the Company’s shares of common stock through Jefferies will be made by any method permitted by law deemed to be an “at the market offering” as defined in Rule 415(a)(4) under the Securities Act of 1933, as amended, including without limitation sales made directly on the Nasdaq Global Select Market or any other existing trading market for its common stock. Jefferies will use commercially reasonable efforts to sell the shares from time to time, based upon instructions from the Company (including any price, time or size limits or other customary parameters or conditions it may impose). The Company is not obligated to make any sales of shares under the Amended Sales Agreement.

The foregoing description of the material terms of the Amendment No. 1 is qualified in its entirety by reference to the full texts of each of the Sales Agreement, a copy of which was filed as Exhibit 1.2 to the Registration Statement and is incorporated herein by reference, and the Amendment No. 1, which is attached as Exhibit 1.1 hereto and is incorporated herein by reference.

The shares to be offered under the Amended Sales Agreement have been registered pursuant to the Registration Statement, and offerings for such shares will be made only by means of a prospectus supplement. This Current Report on Form 8-K shall not constitute an offer to sell or solicitation of an offer to buy these securities, nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities law of such state or jurisdiction.

Cooley LLP, counsel to the Company, has issued a legal opinion relating to the legality of the shares to be offered under the Amended Sales Agreement. A copy of such legal opinion, including the consent included therein, is attached as Exhibit 5.1 hereto.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
1.1	Amendment No. 1 to Sales Agreement, dated February 27, 2023, by and between Vaxcyte, Inc. and Jefferies LLC.
5.1	Opinion of Cooley LLP.
23.1	Consent of Cooley LLP (reference is made to Exhibit 5.1).
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

AMENDMENT NO. 1 TO THE OPEN MARKET SALE AGREEMENTSM

February 27, 2023

JEFFERIES LLC
520 Madison Avenue
New York, New York 10022

Ladies and Gentlemen:

This Amendment No. 1 to the Open Market Sale AgreementSM (this “**Amendment**”) is entered into as of the date first written above by Vaxcyte, Inc., a Delaware corporation (the “**Company**”), and Jefferies LLC (“**Agent**”), that are parties to that certain Open Market Sale AgreementSM, dated July 1, 2021 (the “**Original Agreement**”). All capitalized terms not defined herein shall have the meanings ascribed to them in the Original Agreement. The parties, intending to be legally bound, hereby amend the Original Agreement as follows:

1. The preamble to the Original Agreement is hereby deleted in its entirety and replaced with the following:

“Vaxcyte, Inc., a Delaware corporation (the “**Company**”), proposes, subject to the terms and conditions stated herein, to issue and sell from time to time through Jefferies LLC, as sales agent and/or principal (the “**Agent**”), shares of the Company’s common stock, par value \$0.001 per share (the “**Common Shares**”), on the terms set forth in this agreement (this “**Agreement**”).”

2. Section 2(f) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“[Reserved]”

3. Section 2(mm) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“Sanctions. Neither the Company nor any of its directors, officers, or employees, nor, to the knowledge of the Company, after due inquiry, any agent, affiliate or other person acting on behalf of the Company is currently the subject or the target of any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (“**OFAC**”) or the U.S. Department of State, the United Nations Security Council, the European Union, His Majesty’s Treasury of the United Kingdom, or other relevant sanctions authority (collectively, “**Sanctions**”); nor is the Company located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, Crimea, Cuba, Donetsk People’s Republic, Iran, Luhansk People’s Republic, North Korea, Russia, and Syria; and the Company will not directly or indirectly use the proceeds of this offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, or any joint venture partner or other person or entity, for the purpose of financing the activities of or business with any person, or in any country or territory, that at the time of such financing, is the subject or the target of Sanctions or in any other manner that will result in a violation by any person (including any person participating in the transaction whether as underwriter, advisor, investor or otherwise) of applicable Sanctions. For the past five years, the Company and its subsidiaries have not knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.”

4. The following section is hereby added as section 2(fff):

“FINRA Matters. All of the information provided to the Agent or to counsel for the Agent by the Company, its counsel, its officers and directors and the holders of any securities (debt or equity) or options to acquire any securities of the Company in connection with the offering of the Shares is true, complete, correct and compliant with FINRA rules and any letters, filings or other supplemental information provided to FINRA pursuant to FINRA Rules is true, complete and correct.”

5. The following section is hereby added as section 2(ggg):

“Related Party Transactions. There are no business relationships or related-party transactions involving the Company or any of its subsidiaries or any other person required to be described in the Registration Statement or the Prospectus which have not been described as required.”

6. Section 8(d) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered or telecopied and confirmed to the parties hereto as follows:

If to the Agent:

Jefferies LLC
520 Madison Avenue
New York, NY 10022
Facsimile: (646) 619-4437
Attention: General Counsel

with a copy (which shall not constitute notice) to:

Latham & Watkins LLP
140 Scott Drive
Menlo Park, CA 94025
Attention: Richard Kim

If to the Company:

Vaxcyte, Inc.
825 Industrial Road, Suite 300
San Carlos, CA 94070
Attention: Chief Financial Officer

with a copy (which shall not constitute notice) to:

Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304
Attention: Mark Weeks

Any party hereto may change the address for receipt of communications by giving written notice to the others in accordance with this Section 8(d).”

7. The Company represents and warrants to, and agrees with the Agent that: (a) this Amendment has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company, enforceable in accordance with its terms, except as rights to indemnification hereunder may be limited by applicable law and except as the enforcement hereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights and remedies of creditors or by general equitable principles; and (b) that on or promptly after the date hereof, the Company will file a prospectus supplement and that delivery of a Issuance Notice thereafter constitutes a Triggering Event Date.

8. This Amendment together with the Original Agreement (including all schedules and exhibits attached hereto and thereto and Issuance Notices issued pursuant hereto and thereto) constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof. Neither this Amendment nor any term hereof may be amended except pursuant to a written instrument executed by the Company and the Agent. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable as written by a court of competent jurisdiction, then such provision shall be given full force and effect to the fullest possible extent that it is valid, legal and enforceable, and the remainder of the terms and provisions herein shall be construed as if such invalid, illegal or unenforceable term or provision was not contained herein, but only to the extent that giving effect to such provision and the remainder of the terms and provisions hereof shall be in accordance with the intent of the parties as reflected in this Amendment. All references in the Original Agreement to the "Agreement" shall mean the Original Agreement as amended by this Amendment; *provided, however*, that all references to "date of this Agreement" in the Original Agreement shall continue to refer to the date of the Original Agreement.

9. This Amendment shall be governed by and construed in accordance with the internal laws of the State of New York applicable to agreements made and to be performed in such state. Any legal suit, action or proceeding arising out of or based upon this Amendment or the transactions contemplated hereby may be instituted in the federal courts of the United States of America located in the Borough of Manhattan in the City of New York or the courts of the State of New York in each case located in the Borough of Manhattan in the City of New York (collectively, the "**Specified Courts**"), and each party irrevocably submits to the exclusive jurisdiction (except for proceedings instituted in regard to the enforcement of a judgment of any such court, as to which such jurisdiction is non-exclusive) of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail to such party's address set forth above shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such suit, action or other proceeding brought in any such court has been brought in an inconvenient forum. The provisions of this paragraph shall survive any termination of this Amendment.

10. This Amendment may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Any signature to this Amendment may be delivered by facsimile transmission, electronic mail delivery (including portable document format (PDF) file) or any electronic signature complying with the U.S. federal ESIGN Act of 2000 or the New York Electronic Signature and Records Act or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes to the fullest extent permitted by applicable law.

[Remainder of Page Intentionally Blank]

If the foregoing correctly sets forth the understanding between the Company and the Agent, please so indicate in the space provided below for that purpose, whereupon this letter shall constitute a binding amendment to the Original Agreement between the Company and the Agent.

Very truly yours,

JEFFERIES LLC

By: /s/ Donald Lynaugh

Name: Donald Lynaugh

Title: Managing Director

ACCEPTED as of the date first-above written:

VAXCYTE, INC.

By: /s/ Andrew Guggenime

Name: Andrew Guggenime

Title: President and Chief Financial Officer

[Signature Page to Amendment No. 1 to the Open Market Sale AgreementSM]



Mark B. Weeks
T: +1 650 843 5011
mweeks@cooley.com

February 27, 2023

Vaxcyte, Inc.
825 Industrial Rd, Suite 300
San Carlos, CA 94070

Ladies and Gentlemen:

We have acted as counsel to Vaxcyte, Inc., a Delaware corporation (the “**Company**”), in connection with the offering of shares of its common stock, par value \$0.001 per share (the “**Common Stock**”), having an aggregate offering price of up to \$400,000,000 (the “**Shares**”) pursuant to a Registration Statement on Form S-3 (No. 333-257622) (the “**Registration Statement**”) filed with the Securities and Exchange Commission (the “**Commission**”) under the Securities Act of 1933, as amended (the “**Securities Act**”), which Registration Statement, the prospectus included in the Registration Statement (the “**Base Prospectus**”), and the prospectus supplement dated February 27, 2023, filed with the Commission pursuant to Rule 424(b) under the Securities Act (together with the Base Prospectus, the “**Prospectus**”). The Shares are to be sold by the Company in accordance with that certain Open Market Sale AgreementSM, dated July 1, 2021, between the Company and Jefferies LLC, as amended by Amendment No. 1 to Open Market Sale Agreement, dated February 27, 2023 (as so amended, the “**Agreement**”), as described in the Prospectus.

In connection with this opinion, we have examined and relied upon the Registration Statement, the Prospectus, the Agreement, the Company’s certificate of incorporation and the bylaws, each as currently in effect, and originals, or copies certified to our satisfaction, of such records, documents, certificates, opinions, memoranda and other instruments as in our judgment are necessary or appropriate to enable us to render the opinion expressed below.

In rendering this opinion, we have assumed the genuineness of all signatures; the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as copies; the accuracy, completeness and authenticity of certificates of public officials; and the due authorization, execution and delivery by all persons other than the Company of all documents where authorization, execution and delivery are prerequisites to the effectiveness thereof. As to certain factual matters, we have relied upon a certificate of an officer of the Company and have not independently verified such matters.

We have assumed (i) that each sale of Shares will be duly authorized by the Board of Directors of the Company, a duly authorized committee thereof or a person or body pursuant to an authorization granted in accordance with Section 152 of the General Corporation Law of the State of Delaware (the “**DGCL**”), (ii) that no more than 20,000,000 Shares will be sold under the Agreement pursuant to the Prospectus and (iii) that the price at which the Shares are sold will equal or exceed the par value of the Common Stock. We express no opinion to the extent that future issuances of securities of the Company, anti-dilution adjustments to outstanding securities of the Company and/or other matters cause the number of shares of Common Stock issuable under the Agreement to exceed the number available for issuance by the Company.

Cooley LLP 3175 Hanover Street Palo Alto, CA 94304-1130
t: +1 650 843 5000 f: +1 650 849 7400 cooley.com



Vaxcyte, Inc.
February 27, 2023
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Our opinion herein is expressed solely with respect to the DGCL. Our opinion is based on these laws as in effect on the date hereof. We express no opinion to the extent that any other laws are applicable to the subject matter hereof and express no opinion and provide no assurance as to compliance with any federal or state securities law, rule or regulation.

On the basis of the foregoing, and in reliance thereon, we are of the opinion that the Shares, when sold and issued against payment therefor in accordance with the Agreement, the Registration Statement and the Prospectus, will be validly issued, fully paid and nonassessable.

We consent to the reference to our firm under the caption “Legal Matters” in the Prospectus and to the filing of this opinion as an exhibit to the Company’s Current Report on Form 8-K filed with the Commission on the date hereof and incorporated by reference into the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act, or the rules and regulations of the Commission thereunder.

Very truly yours,

COOLEY LLP

By: /s/ Mark Weeks

Mark Weeks

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